IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Harbhajan Vs. State of Raj.
(D.B. Criminal Appeal No.1286/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 29-8-2002 in Sessions Case No.2/2003 passed by Shri Ramesh Chand Pareek, RHJS, Additional Sessions Judge (Fast Track) No.2 Jaipur City Jaipur.

Date of Judgment: July 09, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Praveen Balwada] for the appellant.
Mr. Suresh Dhenwal]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Harbhajan, appellant herein, was put to trial before the learned Additional Sessions Judge (Fast Track) No.2, Jaipur City, who vide judgment dated August 29, 2002 convicted and sentenced the appellant under section 302 IPC to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer one year rigorous imprisonment.

2. It is the prosecution case that on September 23, 2000 informant Om Prakash @ Pappu (Pw.4) submitted a written report (Ex.P-4) at Police Station Sodala Jaipur stating therein that on the said day in the afternoon while he was sitting at his Tea-shop he saw that many persons were going towards his house. On reaching his house his mother told him that his

tenant Harbhajan Singh killed his wife Sheela. On that report case under section 302 IPC was registered and investigation commenced. On completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2, Jaipur City Jaipur. Charge under section 302 IPC was framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as many as 16 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. Death of Sheela was undeniably homicidal in nature. As per postmortem report (Ex.P-28) following ante mortem injuries were found on the dead body :-

1. Incised wound of size 4 x 1½ cm Lt.side forehead near hair line obliquely skin deep.
2. Incised wound of size 4 x ½ cm Lt.side parito occipital region laterally obliquely skin deep.
3. Incised wound of size 3 x 1 cm x muscle deep Lt.cheek middle part.
4. Incised wound of size ½ x ½ cm outer margin of Lt.mastrol upper part through and through muscle deep.
5. Incised wound of size 2 x 1 cm x muscle deep Lt.nosal orface of nostril at base.
6. Abrasion ½ x ¼ tip of nose.
7. Incised wound of size 5½ x 1½ cm lateral of lower top x muscle deep.
8. Incised wound of size 3 x 1 cm center of chin obliquely muscle deep.
9. Incised wound of size 2½ x 2 cm x cavity deep Lt.side supra clavicular region obliquely.
10. Incised wound of size 4 x 1 cm Lt.side of neck.

11. Incised wound of size 7 x ½ cm x muscle deep oblique Lt.side clavicular region.
12. Incised wound of size 2½ x ½ cm and 1 x ¼ in gap Lt.side neck.
13. Incised wound of size 2½ x ¼ cm Lt.side neck upper part.
14. Incised wound of size 6½ x ½ cm x skin deep oblique upper part of neck Lt.side laterally upper part.

Dr. H.L.Bairwa (PW.12) who performed autopsy on the dead body opined that the cause of death was hemorrhagic shock brought about as a result of injuries to vital organs.

4. A look at the testimony of Soni Devi (PW.2) who was examined as eye witness of the occurrence, reveals that appellant and one Vijay Pandey along with deceased Sheela were residing as tenant in one room. After the incident she saw Vijay Pandey on the roof. Soni Devi was an old lady and her eye sight was weak. During her cross examination she was shown four fingers but she could see only three-

मुलजिम के अधिवक्ता ने पांच कदम दूर से साक्षी को चार अंगुली ऊपर करके बताई और पूछा कि कितनी अंगुली है तो साक्षी ने कहा कि तीन अंगुली है।

5. Vijay Pandey (PW/.5) in his deposition admitted that he and appellant jointly rented a room. Appellant and his wife used to sleep inside the room whereas he used to sleep on the roof. A suggestion was given to him that on the fateful afternoon he was seen by the appellant in compromising position with the appellant's wife, the witness denied the suggestion.

6. The appellant in his explanation under section 313 Cr.P.C. Stated thus -

> घटना के दिन मैं दोपहर को अकस्मात घर आ गया। मैंने अपनी पत्नी व विजय कुमार पाण्डे को आपत्तिजनक अवस्था में एक ही पंलग पर लेटे हुए देखा। इनको इस हालत में देखकर मेरा दिमागी संतुलन बिगड़ गया।

Although the appellant further stated that it was Vijay Kumar Pandey who inflicted injuries with knife on the person of his wife Sheela but this part of his explanation is unreliable.

7. Conjoint reading of material on record demonstrates that the appellant husband cut his wife after he discovered that she was having illicit intercourse with Vijay Kumar Pandey. This fact situation is regarded under law as causing grave and sudden provocation to the appellant husband and anything he did in consequence must be judged and weighed in that light. Large number of cut injuries found on the person of deceased also support this fact that the appellant husband acted under grave and sudden provocation. The offence committed by the accused appellant must be regarded as having been taken out of the category of murder, but would amount therefore, only to culpable homicide not amounting to murder. The murder having been committed under grave and sudden provocation to

which the Exception I to section 300 IPC directly applies.

8. For the reasons aforementioned, we partly allow the appeal of appellant Harbhajan and instead of section 302 we convict him under section 304 part I IPC and sentence him to suffer rigorous imprisonment for ten years and fine of Rs.5000/-, in default to further suffer six months rigorous imprisonment.

The impugned judgment of learned trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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